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Attorneys for Defendant

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 SAN FRANCISCO DIVISION  
12

13 THE CENTER FOR INVESTIGATIVE  
14 REPORTING and PATRICK MICHELS,

Plaintiffs,

15 v.

16 UNITED STATES DEPARTMENT OF  
17 HEALTH AND HUMAN SERVICES,

18 Defendant.

CASE NO.: 18-CV-3756 (TSH)

**STIPULATION OF SETTLEMENT AND  
DISMISSAL WITH PREJUDICE;  
~~[PROPOSED]~~ ORDER**

19 IT IS HEREBY STIPULATED by and between the undersigned Plaintiffs and Defendant, by  
20 and through their respective attorneys, as follows:  
21

22 1. Defendant shall pay \$12,500 (twelve-thousand five-hundred dollars and zero cents) to  
23 Plaintiffs in full and complete satisfaction of Plaintiffs' claims for attorneys' fees, costs, and  
24 litigation expenses under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, as amended, in  
25 the above-captioned matter. This payment shall constitute full and final satisfaction of any and all of  
26 Plaintiffs' claims for attorneys' fees, costs, and litigation expenses in the above-captioned matter,  
27 and is inclusive of any interest. Payment of this money will be made by electronic funds transfer or  
28 check promptly after notification of the Court's entry of this Stipulation and after receipt of

1 necessary information from Plaintiffs to effectuate the payment that Defendant has already  
2 requested. Defendant will make all reasonable efforts to make payment within thirty (30) days of  
3 the date that Plaintiffs' counsel provides the necessary information for the electronic funds transfer  
4 and this Stipulation is approved by the Court, whichever is later, but cannot guarantee payment  
5 within that time frame.

6       2.       Upon the execution of this Stipulation, Plaintiffs, having received the records they  
7 requested, hereby release and forever discharge Defendant, its successors, the United States of  
8 America, and any department, agency, or establishment of the United States, and any officers,  
9 employees, agents, successors, or assigns of such department, agency, or establishment, from any  
10 and all claims and causes of action that Plaintiffs assert or could have asserted in this litigation with  
11 respect to the specific FOIA requests on which this action is based, or which hereafter could be  
12 asserted by reason of, or with respect to, or which arise out of, the specific FOIA requests on which  
13 this action is based, including but not limited to all past, present, or future claims for attorneys' fees,  
14 costs, or litigation expenses in connection with the above-captioned litigation.

15       3.       The provisions of California Civil Code Section 1542 are set forth below:

16       “A general release does not extend to claims that the creditor or releasing party does not  
17 know or suspect to exist in his or her favor at the time of executing the release and that, if  
18 known by him or her, would have materially affected his or her settlement with the debtor or  
released party.”

19 Plaintiffs having been apprised of the statutory language of Civil Code Section 1542 by Plaintiffs'  
20 attorney, and fully understanding the same, nevertheless elects to waive the benefits of any and all  
21 rights Plaintiffs may have pursuant to the provision of that statute and any similar provision of  
22 federal law. Plaintiffs understand that, if the facts concerning any injuries, liability for damages  
23 pertaining thereto, or liability for attorneys' fees, costs or litigation expenses are found hereafter to  
24 be other than or different than the facts now believed by it to be true, this Stipulation shall be and  
25 remain effective notwithstanding such material difference.  
26

27       4.       Execution of this Stipulation and its approval by the Court shall constitute dismissal  
28 of this case with prejudice pursuant to Fed. R. Civ. P. 41(a).

1           5.       The parties acknowledge that this Stipulation is entered into solely for the purpose of  
2 settling and compromising Plaintiffs' claim to attorneys' fees, costs, or other litigation expenses  
3 without further litigation, and it shall not be construed as evidence or as an admission on the part of  
4 Defendant, the United States, its agents, servants, or employees regarding any issue of law or fact, or  
5 regarding the truth or validity of any allegation or claim raised in this action, or as evidence or as an  
6 admission by the Defendant regarding Plaintiffs' entitlement to attorneys' fees, costs, or other  
7 litigation expenses under FOIA. Nor will this Stipulation be construed as an admission on the part  
8 of Plaintiffs or their counsel regarding any issue of law or fact, or regarding the truth or validity of  
9 any defense raised in this action, or as evidence or as an admission by the Plaintiffs regarding  
10 attorneys' fees, costs, or other litigation expenses under FOIA. This Stipulation shall not be used in  
11 any manner to establish liability for fees or costs in any other case or proceeding involving  
12 Defendant or as a defense to fees or costs in any other case or proceeding.

13           6.       This Stipulation is binding upon and inures to the benefit of the parties hereto and  
14 their respective successors and assigns.

15           7.       If any provision of this Stipulation shall be held invalid, illegal, or unenforceable, the  
16 validity, legality, and enforceability of the remaining provisions shall not in any way be affected or  
17 impaired thereby.

18           8.       This Stipulation shall constitute the entire agreement between the parties, and it is  
19 expressly understood and agreed that this Stipulation has been freely and voluntarily entered into by  
20 the parties hereto. The parties further acknowledge that no warranties or representations have been  
21 made on any subject other than as set forth in this Stipulation.

22           9.       The persons signing this Stipulation warrant and represent that they possess full  
23 authority to bind the persons on whose behalf they are signing to the terms of the Stipulation.

24           10.      This Stipulation may not be altered, modified or otherwise changed in any respect  
25 except in writing, duly executed by all of the parties or their authorized representatives.

26           11.      It is contemplated that this Stipulation may be executed in several counterparts, with a  
27 separate signature page for each party. All such counterparts and signature pages, together, shall be  
28 deemed to be one document.

1 IT IS SO STIPULATED.  
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3 CERTIFICATION

4 Pursuant to Civil Local Rule 5-1(i)(3), the filer of this document attests under penalty of  
5 perjury that counsel for Plaintiffs has concurred in the filing of this document.  
6

7 DAVID L. ANDERSON  
8 United States Attorney

9 DATED: December 3, 2019

By: /s/ Ellen London  
10 Ellen London  
Assistant United States Attorney  
Attorney for Defendant

11 DATED: December 3, 2019

12 THE CENTER FOR INVESTIGATIVE  
REPORTING

13 /s/ D. Victoria Baranetsky  
14 D. VICTORIA BARANETSKY

15 Attorneys for Plaintiffs  
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17  
18 PURSUANT TO STIPULATION, IT IS SO ORDERED.

19 Dated: December 4, 2019

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HON. THOMAS S. HIXSON  
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